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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/791,753

03/04/2004

Tsutomu Fujimura

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04/02/2009

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

LEITH, PATRICIA A

ART UNIT

PAPER NUMBER

1655

NOTIFICATION DATE

DELIVERY MODE

04/02/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Interview Summary	Application No. 10/791,753	Applicant(s) FUJIMURA, TSUTOMU	
	Examiner Patricia Leith	Art Unit 1655	

All participants (applicant, applicant's representative, PTO personnel):

(1) Patricia Leith. (3) ____.

(2) Attorney Marina I. Miller. (4) ____.

Date of Interview: 05 March 2009.

Type: a) ☐ Telephonic b) ☐ Video Conference
c) ☒ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☒ Yes e) ☐ No.
If Yes, brief description: proposed amendment.

Claim(s) discussed: 4,6,9,10,12 and 14-17.

Identification of prior art discussed: Lopes and Sigma Aldrich (1996).

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

/Patricia Leith/ Primary Examiner, Art Unit 1655	
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Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: The Attorney inquired as to the election of species requirement. There was some confusion on the part of Applicant of why claims directed only to 'plant' and 'plant part' were removed from examination. Explained to the Attorney that in the examiner's original restriction requirement, Applicant was asked to elect a single species for examination on the merits. The examiner at that time stated 'Applicant is required...to elect a single disclosed species (i.e. elect one species of the various plant species or mixtures thereof or an extract thereof which is listed) for prosecution on the merits. Therefore, the examiner requested one species for examination such as a single plant or mixtures thereof, or an extract of a certain plant. While Applicant elected the plant 'Schisandrachinensis' on 4/18/2005, Applicant subsequently struck this elected species from the claims in the reply filed on 3/22/2006. The Examiner is, per the MPEP allowed to choose another species for examination on the merits when Applicant strikes the elected species from the claims. In the present case, a specific species would be a certain plant, a certain plant part or a certain extract of a plant as was required by the original restriction requirement. In the most recent rejection, the examiner made it clear that since Applicant had struck all species save for *Digenea simplex*, that this species, by default would be examined, however, a particular species of the extract was properly chosen by the examiner and examined on the merits. Thus, the examiner withdrew any claim directed solely to a non-examined species such as 'plant' or 'plant part' including claim 9. While it is true that claim 9 appeared under the 102 rejection placed in the rejection of 7/28/08, this was a clear inadvertent error as the examiner withdrew claim 9 and stated on the record that claim 9 was withdrawn because it was directed toward a non-elected invention and further listed claim 9 as a withdrawn claim. Relayed to the Attorney that if Applicant wants the entire 'plant' of *Digenea Simplex* examined on the merits at this time, then the claims should be narrowed to only include the 'plant' and not the patentable alternatives of 'extract' and 'plant part.' The Attorney argued that it was Applicant's belief that Sigma Aldrich did not disclose that agar was obtained from *Digenea Simplex*. However, the examiner does not agree with this allegation and in order to obviate this teaching of Sigma Aldrich; convincing evidence or arguments would need to be submitted in order to negate the teachings of Sigma Aldrich which specifically teaches that agar and agar-agar is also known as *Digenea simplex mucilage*. The Attorney asserted that *Digenea simplex* is a plant and not '*Digenea simplex mucilage*' which is otherwise known as 'agar' or 'agar-agar' as disclosed by Sigma Aldrich and taught by Lopes as being used in topical soap compositions. Explained to the Attorney that the term 'extract' is very broad; covering any potential extract known or any compound which could potentially be extracted from *Digenea simplex*. Attorney proposed amending the broadest claims to specifically recite a treatment for wrinkles and sagging skin for example. Relayed to the attorney that such an amendment would serve to narrow the claims, but also may possibly lack enablement or written description and that such amendments would be fully considered when they are formally entered into the record.